

Y-NOTCH PROVISION - 120-DAY PROVISIONAL APPROVAL BY SECRETARY 7/21/84

REVISED AMERICAN LOBSTER FMP

REVISED EIS/RIR

MODIFIED LANGUAGE TO THE AMERICAN LOBSTER FMP

Replace language at SUMMARY, MANAGEMENT MEASURES, page 11, V-Notching:

V-Notched Female Lobsters: It shall be prohibited to possess V-notched female lobsters in [or taken from] the area of the FCZ north and east of a line beginning at the intersection of the 43rd parallel with the outer boundary of the territorial sea, proceeding eastward along the 43rd parallel to its intersection with LORAN C bearing 13375, then southeastward along that bearing to its intersection with the 42°15' parallel, then proceeding eastward along that parallel to the outer boundary of the FCZ.

Replace language at §406, Prohibition on the Possession of V-Notched Lobsters, page 32:

Prohibition on the Possession of Female V-Notched Lobsters. Maine is continuing its program of state notching and voluntary V-notching of berried female lobsters, along with a Maine regulation prohibiting the possession or landing of any female lobster that has been V-notched. The practice of V-notching female lobsters may provide some real conservation benefit to the resource through increased spawning potential and increased yield per recruit; although, the extent of infection-induced mortality is not known. The inclusion of this management measure in the FMP does not stand as an endorsement of the practice of V-notching per se. Rather, the resource contribution of this measure is to leave in the population large female lobsters that have been otherwise identified with V-notches, so as to buffer the existing resource by promoting spawning potential and yield-per-recruit benefits that would not otherwise accrue if these lobsters were harvested.

It does not appear that extending the prohibition into the FCZ as described in §510 will have a significant negative impact on lobster fishermen, because Maine will continue to enforce its regulation against the activities of Maine fishermen, and few if any lobster fishermen from other states currently operate in the V-notch conservation area. In the event of an expanding offshore fishery, the measure will provide a buffer against the exploitation of the offshore mature female lobster population in the affected area.

MODIFIED LANGUAGE TO THE AMERICAN LOBSTER FMP
(replaces all of FMP §510, pp. 37-39)

§510 V-Notched Female Lobsters

It shall be prohibited to possess V-notched female lobsters in [or taken from] the area of the FCZ north and east of a line beginning at the intersection of the 43rd parallel with the outer boundary of the territorial sea, proceeding eastward along the 43rd parallel to its intersection with LORAN C bearing 13375, then southeastward along that bearing to its intersection with the 42°15' parallel, then proceeding eastward along that parallel to the outer boundary of the FCZ.

Note that bracketed language should be incorporated if and when the suggested language change to §649.4 of the implementing regulations is adopted.

Background:

Maine has had a lobster V-notching program for more than 40 years. The program has its foundations in state statutes, which provide that part of the receipts from lobster license sales goes toward the purchase of females that become berried while being held in pounds, to compensate the pounds for lobsters that pound owners have already paid for but which they would not be able to sell under state law. The State of Maine then notches these lobsters, plus other non-berried female lobsters that it may also purchase, and returns them to the sea where they are protected by a regulation that prohibits the possession of V-notched female lobsters. In addition to the State's efforts, many of Maine's lobster fishermen also voluntarily notch and return to the sea berried females that they encounter in their traps.

Maine lobstermen widely support the program and are convinced that it provides significant conservation benefits to the resource. The rationale for their support is that a berried female is a proven "brood stock" lobster that will, if not harvested, continue to contribute to future spawning and ultimately benefit future recruitment to the resource. Many Maine lobstermen strongly believe that V-notching is an appropriate complement to other conservation or management measures that may be designed to assure the continued reproductive viability of the stock, particularly in view of the current 3-3/16 inch minimum carapace length.

The practice of V-notching female lobsters may provide some real conservation benefit to the resource. Because those female lobsters that are notched are probably not able to be landed through at least two molts, they will have an opportunity to complete their reproductive cycle, grow, and become berried again. Thus, not only is recruitment likely to be positively affected, but the larger size of these lobsters, when harvested, contributes positively to yield per recruit. Some fishery biologists have raised the concern that lobster V-notching in the open ocean environment may induce gaffkemia, a bacterial infection known as "red tail", which could increase lobster mortality above natural levels. Although this condition has been shown to follow from notching in closed environments, it has not been demonstrated elsewhere. There currently exists no scientific evidence to suggest that V-notching leads to significant waste of the lobster resource due to infection-induced mortality, or that possible forgone catch exceeds the resource benefits which likely result from the practice.

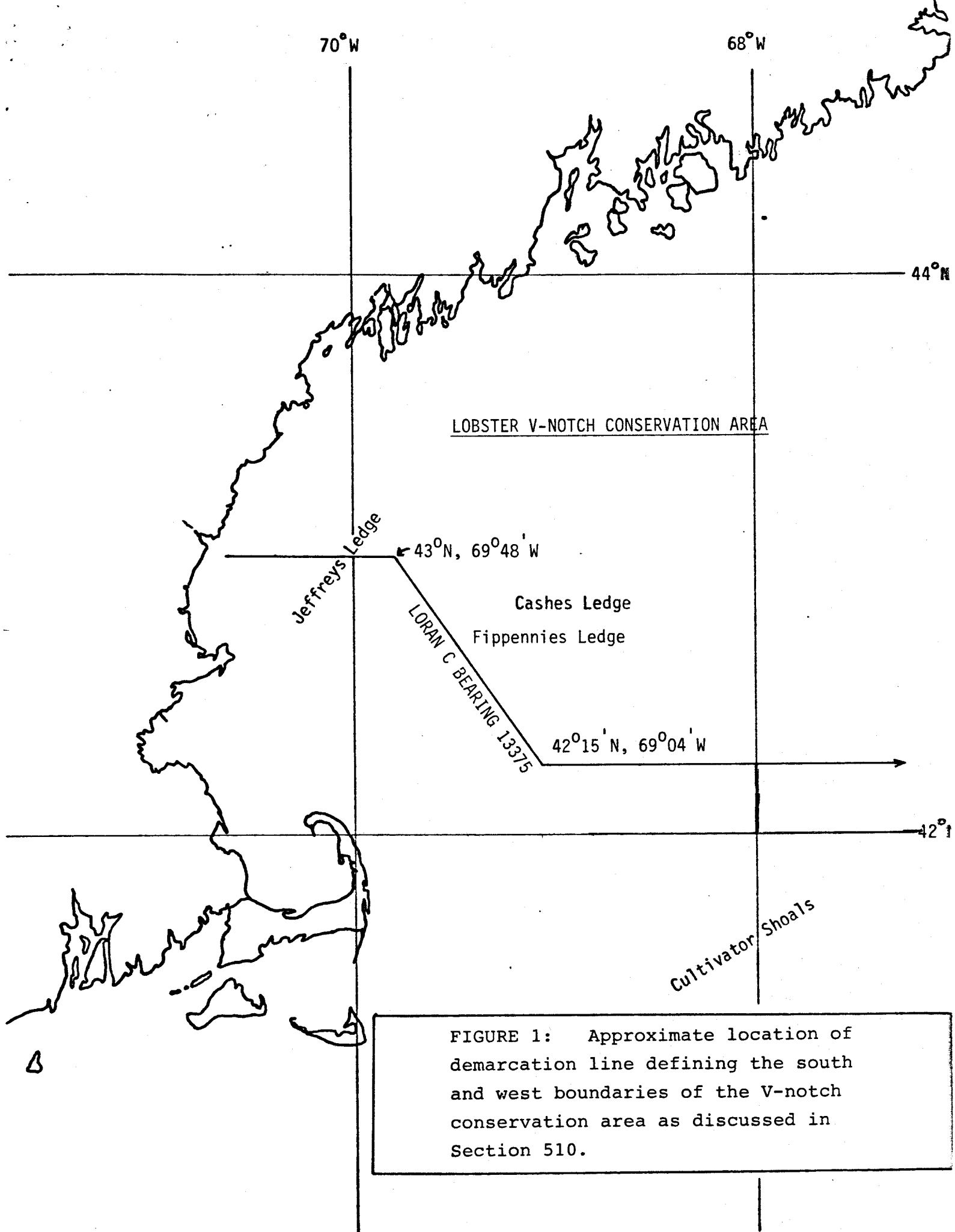


FIGURE 1: Approximate location of demarcation line defining the south and west boundaries of the V-notch conservation area as discussed in Section 510.

Rationale for Council Action:

Aside from the potential conservation benefits of the V-notching measure, an important reason for including this measure in the FMP is to provide federal support for the management program in Maine waters. Fishery management should be as responsive as possible to the needs and desires of fishermen. Because the V-notching program is viewed as such a fundamental conservation measure by many Maine fishermen, it is clear that the efficacy of the lobster management program in adjacent federal waters will be predicated upon the extent to which the regulations positively reflect the view of the individuals who are subject to them. Notwithstanding these considerations, however, the inclusion of this management measure in the FMP does not stand as an endorsement of the practice of V-notching per se. Rather, the resource contribution of this measure is to leave in the population large female lobsters that have been otherwise identified with V-notches, so as to buffer the existing resource by promoting spawning potential and yield-per-recruit benefits that would not otherwise accrue if these lobsters were harvested.

The management measure that is set forth above reflects four major design considerations:

1. the range of the affected (V-notched females) population;
2. the view of the public;
3. the minimization of monitoring/enforcement costs; and
4. the ease of compliance.

Range

The affected portion of the lobster stock (those that are V-notched females) is believed to be relatively discrete with respect to its geographic distribution. Lobster tagging studies in the Gulf of Maine, beginning with Harriman's study in the early 1950's, and followed by Dow's 1957-1959 study, Cooper's 1965-1966 study, and the Spurr and Krouse studies in the 1970's, have tended to indicate that, in general, lobsters stay in the approximate location where they were tagged (<15 miles). However, the Dow and Krouse studies did demonstrate that some large, mature lobsters do undertake fairly extensive southwesterly migrations which could bring them as far south as the Massachusetts coast. Nevertheless, the Council believes that V-notched lobsters do not migrate to any significant extent outside of the general area where they are notched (along the Maine coast). Most importantly, the Council believes that the demarcation line as specified in the measure above circumscribes a significant enough portion of the affected population so as to be effective in limiting the taking of V-notched lobsters. As such, the measure reflects a management approach similar to the Council's qualified requirement for large mesh cod ends in the fishery for cod, haddock and yellowtail flounder. It is possible that tagging studies, such as the cooperative study in the deep waters of the Gulf of Maine that is currently underway between Maine and NMFS, will shed new light on the migration of V-notched lobsters. New information will be reviewed by the Council with a view toward making modifications in the location of the demarcation line as appropriate.

Public View

The issue of prohibiting the possession of V-notched female lobsters was discussed at the public hearings that were conducted on the draft FMP and its associated draft EIS. The measure received clear support in Maine, but public hearings in other New England and Mid-Atlantic states elicited no direct support. Lobstermen from the Mid-Atlantic and Southern New England states generally indicated that so long as the proposed measure did not impinge upon them directly, they had no strenuous disagreement with applying the measure in the waters off northern New England. However, lobstermen in the states of Massachusetts and New Hampshire, referencing the fact that their state agencies had once enforced and more recently abandoned V-notch lobster management regulations, made it clear that they could not support the adoption of a V-notch regulation that adversely affected their state's lobster fishermen who operate in FCZ waters.

The management measure specified above is designed to minimize regulatory interference with fishermen whose states neither support a lobster V-notching program nor enforce regulations prohibiting the possession or landing of V-notched lobsters. As much as possible, and in view of the other design consideration noted above, the adopted lobster V-notch measure defines an area of the FCZ which excludes the preponderance of lobstering activity of states other than Maine. Although there is little if any specific data available from the states about the location of their offshore vessels' operations, discussions with knowledgeable individuals indicate that virtually no New Hampshire lobstermen, and few if any Massachusetts lobstermen, would be expected to operate in the V-notch conservation area as defined in the measure above. The selection of the 42°15' parallel as the southern boundary of the V-notch conservation area places the restricted area somewhat north of Georges Bank and thus minimizes regulatory interference with otter trawling in that area.

Monitoring and Enforcement Costs

The V-notch measure specified above does not require a high degree of monitoring or enforcement activity. First, the area of the FCZ that would be practically subject to monitoring for possession is the relatively narrow band within about 15 miles along the coast, where the vast majority of pot fishermen concentrate their effort. Lobstermen operating with pots beyond 15 miles are many fewer in number, and instead of fishing uniformly throughout the FCZ, they tend to concentrate their effort in "hot spots" such as Cashes Ledge on Fippennies Ledge. Second, because the affected population of V-notched female lobsters is predominantly located in the waters seaward of the Maine coast, and Maine's laws already prevent all local fishermen from retaining V-notched female lobsters (or landing them in other states by virtue of the Lacey Act), monitoring efforts need only be practically directed toward out-of-state pot vessels operating in the relevant portion of the FCZ. It has already been noted that virtually no New Hampshire vessels are currently involved in an offshore fishery beyond 10 to 15 miles from the shore (there was some limited activity in the offshore Georges Bank canyons), and that few Massachusetts offshore fishermen are likely to be included in the affected area as specified in the measure. Lobstermen from other states are not expected to be affected at all. Therefore, only a few non-Maine vessels would be subject to monitoring for enforcement purposes.

As a consequence of the full implementation of this FMP, it is expected that all vessels landing lobsters will be subject to close examination by local and federal enforcement officials. If this measure is supported by a permit endorsement that provides for dockside enforcement, the removal of

V-notched female lobsters from the subject area will be efficiently controlled without the need for at-sea monitoring. In the absence of such an endorsement, the shoreside inspection of lobster catches provides an opportunity to monitor the landing of V-notched lobsters and associate catches with vessels observed to have been fishing in the V-notch conservation area of the FCZ. Identification of "suspect vessels" in this manner provides for more efficient at-sea enforcement by allowing patrol vessels to effectively target their efforts.

As noted above, it is the Council's position that the ability to enforce this measure at the point of landing (through an appropriate permit endorsement) should negate any need for at-sea monitoring. However, in the absence of dockside enforcibility, practical at-sea identification of a possession violation must also be possible. In this regard it can be assumed that lobsters in holding tanks are pretty dynamic. It is unlikely that V-notched lobsters at the bottom of a tank will stay there for very long. As a consequence, if an enforcement officer does not see any V-notched lobsters near the top of a holding tank, he need not drain the tank to satisfy himself that there is little likelihood of a violation. Finally, information on the incidence of V-notched lobster landings obtained from shore-side monitoring throughout the region could be used by the Council to modify the scope of the measure as appropriate.

Compliance

The V-notch measure specified above promotes compliance because of the relative ease with which fishermen and enforcement agents can identify and locate themselves with reference to the V-notch conservation area. The Council's selection of latitude and LORAN C bearings to delineate the affected area was a deliberate attempt to facilitate compliance and remove uncertainty from the at-sea determination of violations, as necessary.

MODIFIED LANGUAGE TO THE LOBSTER EIS/RIR

Replace language at SUMMARY, page 111, item #5:

5. It shall be prohibited to possess V-notched female lobsters in [or taken from] the area of the FCZ north and east of a line beginning at the intersection of the 43rd parallel with the outer boundary of the territorial sea, proceeding eastward along the 43rd parallel to its intersection with LORAN C bearing 13375, then southeastward along that bearing to its intersection with the 42°15' parallel, then proceeding eastward along that parallel to the outer boundary of the FCZ. This measure requires only that V-notched lobsters taken in the affected area be returned to the sea. The measure requires no other level of participation in any V-notching program.

Replace language at Other Measures, page 8:

Other Measures

In addition to the principal management measures, the Council has adopted another measure for a portion of the overall resource area. The measure calls for a prohibition on the possession of V-notched female lobsters in [or taken from] a V-notch conservation area of the FCZ. Maine is continuing its program of State and voluntary V-notching of berried female lobsters, along with a Maine regulation prohibiting the possession or landing of any female lobster that has been V-notched. The practice of V-notching female lobsters may provide some real conservation benefit to the resource through increased spawning potential and increased yield per recruit; although, the extent of infection-induced mortality is not known.

Aside from the potential conservation benefits of the V-notching measure, an important reason for including this measure in the FMP is to provide federal support for the management program in Maine waters. Fishery management should be as responsive as possible to the needs and desires of fishermen. Because the V-notching program is viewed as such a fundamental conservation measure by many Maine fishermen, it is clear that the efficacy of the lobster management program in adjacent federal waters will be predicated upon the extent to which the regulations positively reflect the view of the individuals who are subject to them. Notwithstanding these considerations, however, the inclusion of this management measure in the FMP does not stand as an endorsement of the practice of V-notching per se. Rather, the resource contribution of this measure is to leave in the population large female lobsters that have been otherwise identified with V-notches, so as to buffer the existing resource by promoting spawning potential and yield-per-recruit benefits that would not otherwise accrue if these lobsters were harvested.

Specifically, the measure prohibits the possession of V-notched female lobsters in [or taken from] the area of the FCZ north and east of a line beginning at the intersection of the 43rd parallel with the outer boundary of the territorial sea, proceeding eastward along the 43rd

parallel to its intersection with LORAN C bearing 13375, then southeastward along that bearing to its intersection with the 42°15' parallel, then proceeding eastward along that parallel to the outer boundary of the FCZ.

Other options considered in the development of this measure included several other similar specifications of bounded V-notch conservation areas, with demarcation lines all originating from approximately the Isles of Shoals in the Gulf of Maine, intersecting with (approximately) the 42nd parallel, and terminating at the intersection of that parallel with the outer boundary of the FCZ. Another option included the extension of the prohibition throughout the FCZ. For the reasons stated in §510 of the FMP, the proposed specification is believed to reflect the best balance of considerations for 1) the range of the affected population, 2) the views of the public, 3) the minimization of monitoring/enforcement costs, and 4) ease of compliance.

This measure requires only that the V-notched female lobsters in the affected area of the FCZ (V-notch conservation area) be returned to the sea. The measure requires no other level of participation in any active V-notching program.

